



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:

AE-17J

MAR 26 2009

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Bobby Crye
Power Production Director
Richmond Power and Light
2000 U.S. 27 South
P.O. Box 908
Richmond, Indiana 47375-0908

Dear Mr. Crye:

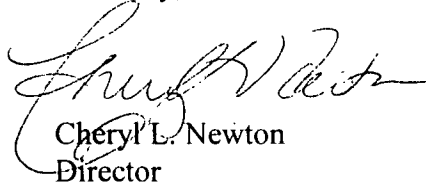
The U.S. Environmental Protection Agency is issuing the enclosed Notice of Violation and Finding of Violation (NOV/FOV) to Richmond Power and Light (RPL). This NOV/FOV is issued in accordance with Section 113(a) of the Clean Air Act (the Act), 42 U.S.C. § 7413(a).

EPA has determined that RPL is violating the Prevention of Significant Deterioration requirements under Part C of the Act, 42 U.S.C. §§ 7470 et seq.; Nonattainment New Source Review requirements under Part D of the Act, 42 U.S.C. §§ 7501 et seq.; Operating Permit requirements under Title V of the Act, 42 U.S.C. §§ 7661 et seq.; and opacity and particulate matter emissions limitations under the Indiana State Implementation Plan at its Whitewater Valley Generating Station (WWVS) located in Richmond, Indiana.

EPA is offering you an opportunity to confer with us about the violations cited in the NOV/FOV. The conference will give you an opportunity to present information on the specific findings of violations, and the steps you will take to bring the facility into compliance. Please plan for your technical and management personnel to attend the conference to discuss compliance measures and commitments. You may have an attorney represent you at this conference.

The EPA contact in this matter is Jamie Iatropulos. You may call her at (312) 886-6024 to request a conference. You should make the request as soon as possible, but no later than 10 calendar days after you receive this letter. We should hold any conference within 30 calendar days of your receipt of this letter.

Sincerely,



Cheryl L. Newton
Director
Air and Radiation Division

Enclosure

cc: Phil Perry, Chief
Office of Air Quality/Compliance Branch
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46204

Dan Hancock
Office of Air Quality/Compliance Branch
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46204

**United States Environmental Protection Agency
Region 5**

IN THE MATTER OF:)	
)	
Richmond Power and Light)	NOTICE OF VIOLATION
Richmond, Indiana)	
)	
Proceedings Pursuant to Section 113 (a) of)	EPA-5-09-IN-03
the Clean Air Act, 42 U.S.C. §§ 7413 (a))	
)	
)	

NOTICE OF VIOLATION AND FINDING OF VIOLATION

This Notice of Violation and Finding of Violation (NOV/FOV) is issued to Richmond Power and Light (RPL) for violations of the Clean Air Act (Act), 42 U.S.C. §§ 7401 *et seq.*, at the Whitewater Valley Generating Station (WWVS), located in Richmond, Indiana.

This NOV/FOV is issued pursuant to Sections 113(a) of the Act, 42 U.S.C. § 7413(a). The authority to issue this NOV/FOV has been delegated to the Regional Administrator of U.S. Environmental Protection Agency Region 5, and redelegated to the Director, Air and Radiation Division.

A. STATUTORY AND REGULATORY BACKGROUND

Prevention of Significant Deterioration Requirements

1. When the Act was passed in 1970, Congress exempted existing facilities from many of its requirements. However, Congress also made it quite clear that this exemption would not last forever. As the United States Court of Appeals for the D.C. Circuit explained in *Alabama Power v. Costle*, 636 F.2d 323, 400 (D.C. Cir. 1979), "[t]he statutory scheme intends to 'grandfather' existing industries; but...this is not to constitute a perpetual immunity from all standards under the PSD program." Rather, the Act requires grandfathered facilities to install modern pollution control devices whenever the unit is proposed to be modified in such a way that its emissions may increase.
2. The Prevention of Significant Deterioration (PSD) provisions of Part C of Title I of the Act require preconstruction review and permitting for modifications of stationary sources in attainment/unclassifiable areas. *See* 42 U.S.C. §§ 7470-7492. Pursuant to applicable regulations, if a major stationary source located in an attainment area is planning to make a major modification, then that source must obtain a PSD permit before beginning actual construction. *See* 40 C.F.R. § 52.21(i). To obtain this permit, the source must, among other things, undergo a technology review and apply Best Available Control Technology

(BACT); perform a source impact analysis; perform an air quality analysis and modeling; submit appropriate information; and conduct additional impact analyses as required.

3. On August 7, 1980, EPA determined that the Indiana PSD rules did not satisfy the Act's requirements and did not approve them under Section 110(a)(3) of the Act, 42 U.S.C. § 7410(a)(3). At that same time, EPA incorporated the provisions of 40 C.F.R. § 52.21(b) through (w) into the Indiana State Implementation Plan (SIP), 45 Fed. Reg. 52676, 52741, as amended at 46 Fed. Reg. 9580 and codified at 40 C.F.R. § 52.793. On January 29, 1981, EPA delegated to the Indiana Department of Environmental Management (IDEM) the partial authority to review and process PSD permit applications, and to implement the federal PSD program. 46 Fed. Reg. 9580, 9583. On March 23, 2003, EPA conditionally approved into the Indiana SIP 326 IAC 2-2, which contains Indiana's PSD regulations. 68 Fed. Reg. 9892, 40 C.F.R. § 52.770(c)(147). On May 20, 2004, EPA approved these rules into the Indiana SIP. 69 Fed. Reg. 29071, 40 C.F.R. § 52.770(c)(165).
4. The regulations in effect at the time of the projects identified in Paragraph 38, below, are the relevant regulations for purposes of this NOV/FOV.
5. 40 C.F.R § 52.21(i)(1) provides that "no stationary source or modification to which the requirements of paragraphs (j) through (r) of this section apply shall begin actual construction without a permit that states that the stationary source or modification would meet those requirements."
6. 40 C.F.R § 52.21(i)(2) provides that "the requirements of paragraphs (j) through (r) of this section apply to any major stationary source and any major modification with respect to each pollutant subject to regulation under the Act"
7. The PSD regulations define "major stationary source" as "Any of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input . . ." 40 C.F.R. § 52.21(b)(1)(i)(a).
8. The PSD regulations define "major modification" as "any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase" of a regulated pollutant. 40 C.F.R § 52.21(b)(2)(i).
9. The PSD regulations state that "net emissions increase means the amount by which the sum of the following exceeds zero: (a) The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated pursuant to paragraph (a)(2)(iv) of this section; and (b) Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with that particular change and are otherwise creditable." 40 C.F.R. § 52.21(b)(3)(i).

10. The PSD regulations state that “Significant means, in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emission that would equal or exceed any of the following rates: ... Nitrogen oxides: 40 tpy; Sulfur dioxide: 40 tpy; Particulate Matter: 25 tpy of particulate matter emissions; 15 tpy of PM₁₀ emissions ...” 40 C.F.R. § 52.21(b)(1)(23)(i).
11. 40 C.F.R. § 52.21(j) requires that: 1) a major stationary source or major modification meet all applicable emissions limitations under the applicable State Implementation Plan along with any standards of performance under 40 C.F.R. Parts 60 and 61; 2) any new major stationary source apply best available control technology for each pollutant subject to regulation under the Act that it would have the potential to emit in significant amounts; and 3) a major modification which would result in a significant net emissions increase apply best available control technology for each pollutant subject to regulation under the Act.

Nonattainment New Source Review Requirements

12. The Nonattainment New Source Review (NNSR) provisions of Part D of Title I of the Act require preconstruction review and permitting for modifications of stationary sources located in nonattainment areas. *See* 42 U.S.C. §§ 7501-15. Pursuant to applicable regulations, if a major stationary source located in a nonattainment area is planning to make a major modification, then that source must obtain a NNSR permit before beginning actual construction. To obtain this permit, the source must, among other things, employ pollution controls that reflect the Lowest Achievable Emission Rate (LAER).
13. On February 16, 1982, EPA approved Indiana’s NNSR rules, which had been incorporated into Section 19 of the Indiana Air Pollution Code (APC 19). 47 Fed. Reg. 6621. APC 19 governed the preconstruction review of modifications of facilities in nonattainment areas that occurred prior to December 6, 1994. Indiana’s definitions regulation at APC 1 was codified at 325 Indiana Administrative Code (IAC) 1.1-1. 46 Fed. Reg. 54941 (November 15, 1981), and became effective on December 7, 1981.
14. On October 7, 1994, EPA approved 326 IAC 2-1-1 and 2-1-3 as SIP revisions to satisfy the new source review requirements of the Clean Air Act Amendments of 1990. On that same date, EPA also approved Indiana’s recodification of APC 19 into 326 IAC 2-2. 59 Fed. Reg. 51108, effective December 6, 1994. Included in the NNSR SIP revisions were changes to the definitions previously codified at 325 IAC 1-1, now codified at 326 IAC 2-3-1.
15. On and after December 6, 1994, the Indiana SIP prohibits, in a nonattainment area, the construction of modifications that would result in a “significant net emissions increase” of 40 tons per year of sulfur dioxide (SO₂), 40 tons per year of nitrogen oxides (NO_x), or 25 tons per year of particulate matter (PM) unless the source achieves LAER and offsets such emissions with a reduction of emissions of the same pollutant from one existing source or a combination of existing sources. 326 IAC 2-3-1, 326 IAC 2-3-3.

Standards for Opacity and Particulate Matter

16. EPA approved 326 Indiana Administrative Code 5-1-2, governing visible emissions, as part of the Indiana SIP on June 16, 1997 (62 Fed. Reg. 18521).
17. 326 Indiana Admin. Code 5-1-2(3) states that "Opacity from Richmond Power & Light's Coal Boiler No. 1 and Coal Boiler No. 2 shall not exceed an average of thirty percent (30%) opacity in one (1) six (6) minute averaging period. Effective May 1, 1999, opacity from Richmond Power & Light's Coal Boiler No. 1 and Coal Boiler No. 2 shall not exceed an average of twenty-five (25%) opacity in any one (1) six (6) minute averaging period."

Title V Requirements

18. Section 502(a) of the CAA, 42 U.S.C. § 7661a(a), provides that no source may operate without a Title V permit after the effective date of any permit program approved or promulgated under Title V of the Act. EPA first promulgated regulations governing state operating permit programs on July 21, 1992. See 57 Fed. Reg. 32295; 40 C.F.R. Part 70. EPA promulgated regulations governing the Federal operating permit program on July 1, 1996. See also 61 Fed. Reg. 34228; 40 C.F.R. Part 71.
19. Section 503 of the CAA, 42 U.S.C. § 7661b, sets forth the requirement to timely submit an application for a permit, including information required to be submitted with the application.
20. Section 504(a) of the CAA, 42 U.S.C. § 7661c(a), requires that each Title V permit include enforceable emission limitations and standards, a schedule of compliance, and other conditions necessary to assure compliance with applicable requirements, including those contained in a state implementation plan. 42 U.S.C. § 7661c(a).
21. 40 C.F.R. § 70.1(b) provides that: "All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable requirements." See also 326 IAC 2-7-5.
22. 40 C.F.R. § 70.2 defines "applicable requirement" to include "(1) Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rulemaking under title I of the Act that implements the relevant requirements of the Act, including revisions to that plan promulgated in part 52 of this chapter . . ."
23. 40 C.F.R. § 70.3 provides that the requirements of Part 70 apply to any major source located in a state that has received whole or partial approval of its Title V program.
24. 40 C.F.R. § 70.7(b) provides that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act. See also 326 IAC 2-7-3.

25. 40 C.F.R. § 70.5(a) and (c) require timely and complete permit applications for Title V permits with required information that must be submitted and 40 C.F.R. § 70.6 specifies required permit content. See also 326 IAC 2-7-4.
26. 40 C.F.R. § 70.5(b) provides that: “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft permit.” See also 326 IAC 2-7-4(b).

Indiana’s Title V Requirements

27. On November 14, 1995 (60 Fed. Reg. 57188), EPA granted Indiana interim approval of its Title V program. EPA granted final approval to Indiana’s Title V program on November 30, 2001 (66 Fed. Reg. 62969, December 4, 2001). See 40 C.F.R. Part 70, Appendix A. Indiana’s Title V program became effective on that date. See also 61 Fed. Reg. 39597.
28. The Indiana regulations governing the Title V permitting program are codified at 326 IAC 2-7, and are federally enforceable pursuant to Section 113(a)(3).
29. 326 IAC 2-7-2 specifies the sources subject to 40 C.F.R. Part 70 requirements. 326 IAC 2-7-5 specifies that the content of the Part 70 permit include operational requirements and limitations that assure compliance by the source with all applicable requirements.
30. 326 IAC 2-7-3 requires that no source subject to 40 C.F.R. Part 70 requirements may operate without a permit as specified in the Act.
31. 326 IAC 2-7-4 requires the owner or operator of a Part 70 source to submit a timely and complete permit application for a Title V permit with the required information specified in this rule.
32. 326 IAC 2-7-4(b) states that “Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a Part 70 permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to release of a draft Part 70 permit.”

B. FACTUAL BACKGROUND

33. Richmond Power and Light (RPL) is part of the City of Richmond, Indiana, which is a municipal corporation in Indiana.
34. RPL is a "person", as that term is defined in Section 302(e) of the Act, 42 U.S.C. § 7602(e).
35. During all times relevant to this Notice, the Whitewater Valley Generating Station was located in an area classified as attainment for PM (as total suspended particulates (TSP) and/or particles with an aerodynamic diameter less than or equal to a nominal 10 microns (PM₁₀)) and NO_x. The Whitewater Valley Generating Station was located in an area classified as non-attainment for SO₂ from March 3, 1978 to January 14, 1997; all other years are classified as attainment for SO₂. 43 Fed. Reg. 8962 (March 3, 1978), 43, Fed. Reg. 41412 (Sept. 11, 1978), 43 Fed. Reg. 45993 (October 5, 1978), and 61 Fed. Reg. 58482 (November 15, 1996).
36. RPL owns and/or operates the Whitewater Valley Generating Station, a fossil-fuel fired electric utility steam generating plant located at 2000 U.S. 27 South, P.O. Box 908, Wayne County, Richmond, Indiana; which has the potential to emit more than 100 tons per year each of NO_x, SO₂, and PM. The Station consists, in part, of the following coal-fired boilers for electric generation, each of which has a heat input greater than 250 million BTU/hour: Unit 1 constructed in 1954/1955 and Unit 2 constructed in 1971/1972.
37. The Whitewater Valley Generating Station is a "fossil fuel-fired steam electric plant of more than 250 million British thermal units per hour." Therefore, the Whitewater Valley Generating Station constitutes a "major stationary source" within the meaning of 40 C.F.R. § 52.21(b)(1)(i)(a); and a "major emitting facility" within the meaning of Section 169(1) of the Act, 42 U.S.C. § 7479(1).
38. Between 1996 and 1998, various physical changes or changes in the method of operation were made at the Whitewater Valley Generating Station. These changes include, but are not limited to, the following projects on Units 1 and 2:

Unit 1 1998 Project

- Replacement of pulverizer and associated controls
- Re-tubing of generating bank section of the boiler
- Re-tubing of superheat section of the boiler
- Replacement of ID/FD fan and motor
- Approximate cost of \$1,868,686

Unit 2 1996 Project

- Re-tubing of economizer section of the boiler
- Approximate cost of \$133,978

C. NOTICE OF VIOLATIONS AND FINDING OF VIOLATIONS

Violations of the Prevention of Significant Deterioration Requirements

39. The projects identified in Paragraph 38, above, each caused a significant net emissions increase, as defined at 40 C.F.R. §§ 52.21(b)(3)(i) and (b)(23)(i) of SO₂, NO_x and/or PM. See also 326 IAC 2-1-1(jj) and (yy).
40. The projects identified in Paragraph 38, above, each constituted a “major modification,” as that term is defined at 40 C.F.R. § 52.21(b)(2)(i). See also 326 IAC 2-1-1(ee).
41. For the modifications listed in Paragraph 38, above, RPL failed to obtain a PSD permit(s) as required by 40 C.F.R. § 52.21(i)(1). See also 326 IAC 2-1-2(c).
42. RPL violated and continues to violate Section 165(a) of the Act, 42 U.S.C. § 7475(a), and 40 C.F.R. § 52.21(i)(1) and/or IAC 326 2-1-2(c) by constructing major modifications to existing major sources at the above-listed facilities without applying for or obtaining PSD permits and operating the modified facilities without installing the best available control technology or going through PSD review, and installing appropriate emission control equipment in accordance with a BACT analysis.
43. Each of the violations exists from at least the date of the start of construction of each modification and continues until the appropriate PSD permit is obtained and the necessary pollution control equipment is installed and operated.

Violations of the Nonattainment New Source Review Requirements

44. The projects identified for unit 2 in Paragraph 38, above, each caused a significant net emissions increase, as defined by 326 IAC 2-3-1, of SO₂.
45. The projects identified for unit 2 in Paragraph 38, above, each constituted a “major modification,” as that term is defined by 326 IAC 2-3-1.
46. For the modifications identified for unit 2 in Paragraph 38, above, RPL did not install LAER for SO₂ for each of those projects.
47. For the modifications identified for unit 2 in Paragraph 38, above, RPL did not offset the significant net emissions increase of SO₂ for each of those projects.

48. RPL violated and continues to violate 326 IAC 2-3-3 by constructing a major modification on unit 2 without, among other things, achieving LAER for SO₂ and obtaining offset of significant net emissions of SO₂.

49. Each of the violations exists from at least the date of the start of construction of each modification and continues until the appropriate NNSR permit is obtained and the necessary pollution control equipment is installed and operated.

Violations of Opacity and Particulate Matter Emissions Standards

50. Table 1, below, identifies the number of minutes of emissions in violation of 326 IAC 5-1-2(3), based on reports of emissions in excess of 25 percent opacity submitted by RPL to the Indiana Department of Environmental Management from the first quarter of 2004 to the fourth quarter 2007.

Table 1: Whitewater Valley Generating Station Unit 1 and Unit 2.

Station	Process ID	Emission Limit	Quarter	Description of Violation
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q1-2004	2,724 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q2-2004	4,134 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q3-2004	1,176 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q4-2004	3,840 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q1-2005	2,856 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q2-2005	4,206 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q3-2005	2,646 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q4-2005	2,676 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q1-2006	708 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q2-2006	3,030 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q3-2006	2,790 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q4-2006	1,968 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q1-2007	1,932 minutes of excess emissions

Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q2-2007	2,592 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q3-2007	3,222 minutes of excess emissions
Whitewater Valley Generating Station	Unit #1/Unit #2	25 percent opacity	Q4-2007	2,424 minutes of excess emissions

51. Whitewater Valley Generating Station Unit 1 and Unit 2 are subject to and in violation of 326 IAC 5-1-2(3), for, at least, the number of minutes identified in Table 1. These violations only include the particulate matter emissions in excess of 25 percent opacity as reported by Richmond Power and Light in excess emission reports.

Violations of the Title V Provisions

52. The facility identified, above, is a “major source” as defined by Section 501(2) of the Act, 42 U.S.C. § 7661(2) and 40 C.F.R. § 70.2.

53. Since August 29, 1996, RPL has failed to submit timely and complete Title V permit applications for Whitewater Valley Generating Station with information pertaining to the modifications identified in Paragraph 38, above, and with information concerning all applicable requirements, including, but not limited to, the requirement to apply, install and operate BACT or LAER for NO_x, SO₂ and/or PM at the plants and also failed to supplement or correct the Title V permit applications for these plants in violation of Sections 502, 503 and 504 of the Act, 42 U.S.C. §§ 7661a, 7661b and 7661c; the regulations at 40 C.F.R. Part 70, including, but not limited to, 40 C.F.R. §§ 70.1(b), 70.5(a), (b) and (c), 70.6 and 70.7(b); and the Indiana Title V provisions at 326 IAC 2-7.

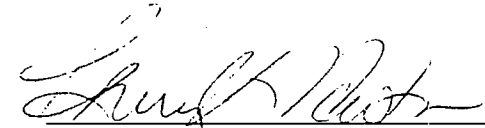
D. ENFORCEMENT

Section 113(a) of the Act, 42 U.S.C. § 7413(a)(1), provides that at any time after the expiration of 30 days following the date of the issuance of a Notice of Violation, the Administrator may, without regard to the period of violation, issue an order requiring compliance with the requirements of the state implementation plan or permit, issue an administrative penalty order pursuant to Section 113(d), or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

Section 113(a)(3) of the Act, 42 U.S.C. § 7413(a)(3), provides in part that if the Administrator finds that a person has violated, or is in violation of any requirement or prohibition of any rule...promulgated...under...[Title I or Title V of the Act], the Administrator may issue an administrative penalty order under Section 113(d), issue an order requiring compliance with such requirement or prohibition, or bring a civil action pursuant to Section 113(b) for injunctive relief and/or civil penalties.

E. EFFECTIVE DATE

3/26/09
Date


Cheryl L. Newton
Director
Air and Radiation Division

CERTIFICATE OF MAILING

I, Tracy Jamison, certify that I sent a Notice and Finding of Violation, No. EPA-5-09-IN-03, by Certified Mail, Return Receipt Requested, to:

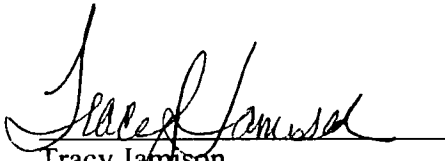
Bobby Crye
Power Production Director
Richmond Power and Light
2000 U.S. 27 South
P.O. Box 908
Richmond, Indiana 47375-0908

I also certify that I sent copies of the Notice and Finding of Violation by first class mail to:

Phil Perry, Chief
Office of Air Quality/Compliance Branch
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46204

Dan Hancock
Office of Air Quality/Compliance Branch
Indiana Department of Environmental Management
100 North Senate, Room 1001
Indianapolis, Indiana 46204

on the 27 day of March, 2009.


Tracy Jamison
Office Automation Clerk
AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 701 032D 0005 89192928.